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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,107	12/29/2001	Svend Frolund	10006790-1	5957

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EXAMINER

OPIE, GEORGE L

ART UNIT	PAPER NUMBER
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2194

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/037,107	Frolund et al.	
	Examiner	Art Unit	
	George L. Opie	2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15, 18-23 and 26-28 is/are pending in the application.
- 4a) Of the above claim(s) ☐ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ☐ is/are allowed.
- 6) ☒ Claim(s) 1-15, 18-23 and 26-28 is/are rejected.
- 7) ☐ Claim(s) ☐ is/are objected to.
- 8) ☐ Claim(s) ☐ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ☐ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ☐ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
  2. ☐ received in Application No. (Series Code / Serial Number) ☐.
  3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- 14) ☐ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☐ Information Disclosure Statement(s) (PTO-1449) ☐.

- 17) ☐ Interview Summary (PTO-413) Paper No(s). ☐.
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other: ☐.

WILLIAM THOMSON  
SUPERVISORY PATENT EXAMINER

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### DETAILED ACTION

This Office Action is responsive to the Amendment dated 21 June 2006, in which claims 11-23 were amended. Now, in the case, claims 1-15, 18-23 and 26-28 are pending.

1. Request for copy of Applicant's response on floppy disk:  
Please help expedite the prosecution of this application by including, along with your amendment response in paper form, an electronic file copy in WordPerfect, Microsoft Word, or in ASCII text format on a 3½ inch IBM format floppy disk. Please include all pending claims along with your responsive remarks. Only the paper copy will be entered -- your floppy disk file will be considered a duplicate copy. Signatures are not required on the disk copy. The floppy disk copy is not mandatory, however, it will help expedite the processing of your application. Your cooperation is appreciated.

2. Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-15, 18-23 and 26-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over **Barry et al.** (U.S. Patent 6,615,258) in view of Dedrick (U.S. Patent 5,710,884).

**As to claim 10**, Barry teaches the invention as claimed including a computer system (see *the Abstract and col.3, lines 42-63*)) comprising:

an application (e.g., *a report requester client application 212; cl.21 Ins 35-36*)

a plurality of sub-systems (e.g., *212, 215, 210, 250, 260; fig.10*) for having an interaction with the application (see *fig.10 and the accompanying text beginning at col.21, line 25*)

an interceptor system (e.g., *the report manager server 250, cl. 21 In 50*) including:

a proxy having an interaction with the application and including

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a customization control (see the proxy discussions beginning at col.21, line 27 and col.28, line 46)

a plurality of customization modules (e.g., application proxy components, cl.21 ln 26) providing customizations (e.g., customize, cl.21 ln 26-27) for a plurality of non-functional properties (e.g., customizing data and account information; col.21, lines 27-31) of the computer and having an interaction (e.g., request, specify, schedule, and receive; col.21, lines 27-31) with the proxy as controlled by the customization control; and

a dispatcher having an interaction with the plurality customization modules and having an interaction with the plurality of sub-systems (fig.10 and the dispatch server 22 discussion -- cl.21 ln 50 et seq.)

a customization repository for containing the customization modules (see fig.10 and the database 258 discussion beginning at col.22, line 33).

Barry does not explicitly disclose the additional limitations detailed below.

Dedrick teaches a customization control (content adapter 25, col. 7 lns 9-39) to install a customization module to the interceptor system (Session manager 29 transfers data and control information, col. 5 line 17-47) while the application is running (step 414, an updated user profile information is transmitted back to the network system 10 at intervals indicated by the updated interval field, c20 22-29).

It would have been obvious to combine Dedrick's teachings with Barry because the "updating of user profile data is transparent", col. 4 lines 14-23 and contemporaneous with each individual's use of the system, thereby facilitating optimal adaptive flexibility so that each service most effectively suits the users attributes.

**As to claim 19**, the rejection of claim 10 above is incorporated herein in full. Additionally, Barry further teaches a failover operation (see the failover and failure discussions beginning at col.59, line 49 and col.61, line 27).

**As to claim 20**, the rejection of claim 10 above is incorporated herein in full. Additionally, Barry further teaches at least failure masking and performance measurement (see the failover and failure discussions beginning at col.59, line 49 and col.61, line 27).

**As to claim 1**, the rejection of claim 10 above is incorporated herein in full. Additionally, Barry further teaches:

a service having an interaction with the customization repository (e.g., report manager server 250; col.21, lines 50-58 and fig.10);

a client having an interaction with the service (e.g., a report requester client application 212; col.21, lines 25-42 and fig.10); and

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a control having an interaction with the customization repository and the service for causing customization of the service and the client by disposing the proxy of the interceptor system to interact with the application and the dispatcher of the interceptor system to interact with the sub-system (*col.3, lines 54-67 and col.10, lines 40-51*).

As to claim 2, Barry teaches the client has an interaction (*col.21, lines 25-43*) with the customization repository, the client responsive to the control through the service for causing customization of the service and the client by disposing the proxy of the interceptor system to interact with the application and the dispatcher of the interceptor system to interact with the sub-system (*cl.21 ln 66 -- col.7, line 8*).

As to claim 3, Barry teaches a customization developer system (*col.21, lines 50-55*) having an interaction with the customization repository for providing customizations thereto while the service is interacting with the client (*cl.22 lns 45-47*).

As to claim 4, Barry teaches a plurality of customization modules (*col.21, lns 54-55*) each of the plurality of customization modules having a different customization; and wherein: the proxy includes a customization control for controlling the interaction of the plurality of customization modules with the proxy (*col.3, lines 54-67*).

As to claim 5, Barry teaches a plurality of sub-systems (*e.g., 212, 215, 210, 250, 260; fig. 10*); a plurality of customization modules (*col.21, lines 54-55*), each of the plurality of subsystems having one of the plurality of customization modules having a different function (*col.21, lines 24-31*); and a customization control for controlling the interaction of the plurality of sub-systems with the dispatcher (*col.21, lines 35-36*).

As to claim 6, Barry teaches the service includes a customization development interface for interacting with the control to cause a group including the service and the client to obtain a customization (*col.3, lines 42-63*).

As to claim 7, Barry teaches the customization module is for customization of a non-functional property of the computer system (*e.g., customizing data and account information; col.21, lines 27-31*) of the software system.

As to claim 8, Barry teaches the customization module is selected from, among other things, a group consisting of performance related module (*col.21, lines 6-13*).

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**As to claim 9**, note the discussion of claim 1 supra. The limitations in claim 9 are functionally equivalent to the claim 1 limitations and would likewise have been obvious given the references and reasoning in the claim 1 rejection.

As to claim 26, Barry teaches the first non-functional property comprises failover control (*see the failover and failure discussions beginning at col.59, line 49 and col.61, line 27*).. (e.g., *the failover; col.59, lines 49-62*).

As to claim 27, Barry teaches the first non-functional property comprises error handling and the second non-functional property comprises performance measurement (*see the failover and failure discussions beginning at col.59, line 49 and col.61, line 27*).

As to claim 28, Barry teaches the first non-functional property comprises failure masking (*see the failover and failure discussions beginning at col.59, line 49 and col.61, line 27*).

**As to claim 11**, note the discussion of claim 10 supra. The limitations in claim 11 are functionally equivalent to the claim 10 limitations and would likewise have been obvious given the references and reasoning in the claim 10 rejection.

As to claim 12, Barry teaches a control for causing the proxy of the interceptor system to interact with the application and the dispatcher of the interceptor system to interact with the sub-system (e.g., *the customer interface system is an application backplane unit for controlling and managing the overall user interface system to a number of Web enabled application services; col.3, lines 54-67*).

As to claim 13, Barry teaches a customization developer system for developing additional customization modules (*see fig.10 and the accompanying text beginning at col.21, line 25*); and a customization repository to store the additional customization modules (*see fig.10 and the database 258 discussion beginning at col.22, line 33*), the additional customization modules in the customization repository to be communicated to the interceptor system over a link (*col.21, lines 25-49*).

As to claim 14, Barry teaches the proxy includes a customization control for controlling the interaction of the first and second customization modules with the proxy (*col.3, lines 54-67*).

As to claim 15, Barry teaches a plurality of sub-systems (e.g., 212, 215, 210, 250, 260; *fig.10*); a plurality of customization modules (*col.21, lines 54-55*), each of the plurality of subsystems having one of the plurality of customization modules having a different function (*col.21, lines 24-31*); and a customization control for controlling the interaction of the plurality of sub-systems with the

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dispatcher connected to a group consisting of the application (*col.21, lines 35-36*), the proxy (*col.28, lines 50-52*), the dispatcher (*col.22, lines 45-47*), and a combination thereof.

As to claim 18, Barry teaches the customization module is selected from, among other things, a group consisting of performance related module (*col.21, lines 6-13*).

As to claim 21, Dedrick teaches the interceptor system to enable removal of the first customization module while the application is running (*col.12, lines 35-66*).

As to claim 22, Barry teaches the customization provided by the first customization module comprises at least one of performance measurement and failure masking (*see the failover and failure discussions beginning at col.59, line 49 and col.61, line 27*).

As to claim 23, Barry teaches the proxy has an interface to the application; and the first customization module has a first interface to the proxy, and a second interface to the dispatcher (*see fig.10*).

#### **4. Response to Applicant's Arguments:**

During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969)

In considering the proxy and customization recitations, it is noted that Applicant uses terminology that has broad meaning in the art, and thus requires a broad interpretation of the claims in determining patentability of the disclosed invention. Applicant should set forth claims in language that clearly, distinctly, unambiguously and uniquely define the invention. The fact that Applicant has not narrowed the definition/scope of the current claims implies that Applicant intends an extensive coverage breadth of the claims, which is clearly met by the prior art of Barry and Dedrick.

Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir.. 2003). claims must be interpreted "in view of the

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specification" without importing limitations from the specification into the claims unnecessarily. (see *Prater supra* at 1404-05, 550-551).

See also *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (1989) "During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process."

Applicant additionally argues that "no motivation or suggestion existed to combine Barry and Dedrick."

The legal standard, or test for the relevance of a combination of references is: "whether the teachings of the prior art, taken as a whole, would have made obvious the claimed invention," *In re Gorman* 933 F.2d at 986, 18 USPQ2d at 1888. Subject matter is unpatentable under section 103 if it 'would have been obvious ... to a person having ordinary skill in the art.' While there must be some teaching, reason, suggestion, or motivation to combine existing elements to produce the claimed device, it is not necessary that the cited references or prior art specifically suggest making the combination: *In re Nilssen*, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988)." Such suggestion or motivation to combine prior art teachings can derive solely from the existence of a teaching, which one of ordinary skill in the art would be presumed to know, and the use of that teaching to solve the same [or] similar problem which it addresses. *In re Wood*, 599 F.2d 1032, 1037, 202 USPQ 171, 174 (CCPA 1979).

"In sum, it is off the mark for litigants to argue, as many do, that an invention cannot be held to have been obvious unless a suggestion to combine prior art teachings is found in a specific reference." *In re Oetiker*, 24 USPQ2d 1443 (CAFC 1992).

Also, in a most recent case, the Court of Appeals for the Federal Circuit emphasized that a motivation to combine does not have to be found explicitly in the prior art and that it can be implicit from the art as a whole, flow from the nature of the problem to be solved or the knowledge of one of ordinary skill in the art. (*Ormco Corp. v. Align Tech, Inc.*, No. 05-1426 (August 30, 2006).

The customized proxy transactions, in the manner recited in the pending claims does not constitute a non obvious improvement over the prior art.

Applicant's arguments, dated 21 June 2006, have been fully considered but they are not deemed to be persuasive. For the reasons detailed above, the rejections set forth in the previous Office Action under **35 U.S.C. § 103** are maintained.



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5. THIS ACTION IS MADE FINAL.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

**Contact Information:**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private-PAIR or Public-PAIR.

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All responses sent by U.S. Mail should be mailed to:

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Hand carried responses should be delivered to the *Customer Service Window* (Randolph Building, 401 Dulany Street, Alexandria, Virginia 22314) and, if submitting an electronic copy on floppy or CD, to expedite its processing, please notify the below identified examiner prior to delivery, so that the Applicant can "handoff" the electronic copy directly to the examiner.

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The Official fax number (571) 273-8300 should be used for any and all facsimile submissions to the Office.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist at **(571) 272-2100**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Opie at (571) 272-3766 or via e-mail at *George.Opie@uspto.gov*. Internet e-mail should not be used where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified unless there is an express waiver of the confidentiality requirements under 35 U.S.C. 122 by the Applicant. Sensitive data includes confidential information related to patent applications.



WILLIAM THOMSON  
SUPERVISORY PATENT EXAMINER